

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:11cr070
Akron, Ohio
Plaintiff, July 13, 2011

vs.

MATTHEW HOLLAND,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID D. DOWD
UNITED STATES DISTRICT JUDGE

CHANGE OF PLEA HEARING

APPEARANCES:

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Court Reporter: Lori Ann Callahan, RMR-CRR
United States District Courthouse
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

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THE COURT: The court calls the case of United

15:16:28

5

States versus Matthew J. Holland, Case Number 1:11cr70.

6

This case is scheduled for trial, I believe, for July 25.

7

8

The court published an opinion yesterday

9

denying the defendant's motion for, in effect, a second

15:17:02

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suppression hearing, and from my standpoint, the case is

11

ready for trial, unless there's going to be some separate

disposition. Mr. Serrat?

12

MR. SERRAT: Thank you, Your Honor.

13

14

I've had discussions with my client as a

result of the court's ruling. My client has yet to see me.

15:17:18

15

I thought I was going to have an opportunity to talk to him

16

and I didn't. I went to CCA this morning at 8:30. I guess

17

he was already here and I missed him.

18

Lo and -- then I was going to have time, but I

19

had a sentencing.

15:17:30

20

THE COURT: I am perfectly okay to delay this

21

for half an hour, if you want to go up to the marshal's

22

office and review it with him.

23

MR. SERRAT: Before that, Judge, in

24

anticipating that, I've had some communications with the

15:17:40

25

U.S. Attorney's Office yesterday, I think afternoon, tried

1 to figure out exactly where it is that they think my client
2 is going to be, and I didn't know whether I was going to
3 have sufficient time to discuss that with him. I'm worried
4 about the third level for acceptance of responsibility if he
15:17:57 5 changes his mind. And I was trying to figure out if he
6 would give me a day or two to make that final decision.

7 I don't know whether a half hour would do it
8 or not. And I think -- Monday was thrown out -- up in the
9 air by --

15:18:12 10 THE COURT: I am sorry, what was thrown out?

11 MR. SERRAT: Up until Monday to make the
12 decision or schedule a change of plea on that day. And
13 that's what we were discussing before the court came in.

14 And I don't know if Mr. Tripi has made up his
15:18:27 15 mind or not. I also asked him the same question yesterday
16 and we had that same discussion yesterday as well. I now
17 think I have a pretty good idea where the government thinks
18 my client is going to be as far as the level computation.
19 That will be later on for sentencing, certainly not at the
15:18:43 20 time of plea.

21 Again, I really would like some time to talk
22 this over with my client. I thought I was going to have all
23 morning and I didn't.

24 THE COURT: I realize that. Can I see the
15:18:52 25 scheduling book, please? There comes a point where counsel

1 needs to know whether they're going to go to trial or if
2 there's some other disposition. I am fairly reluctant to
3 keep continuing this. I was hopeful possibly that I
4 certainly have more time here yet today for you all to
15:19:47 5 discuss this. It's only 3:20. I guess I am interested in
6 what the government's position is.

7 MR. TRIPI: Judge, I just wanted to let the
8 court know that I've provided Mr. Serrat with the
9 calculations, which I can again provide him with the
15:20:10 10 guidelines that his client would be exposed to if he chooses
11 to plead, and we've also written up a small addendum,
12 written addendum in the event he wants to enter a
13 conditional plea.

14 So the status of the discussions are that we
15:20:25 15 are willing, if we have a timely plea, to consider still
16 granting him the third level and give him a conditional
17 change of plea.

18 The offer that's on the table right now is,
19 simplistically, that the defendant would have an ability to
15:20:42 20 plead straight up to the four counts of the indictment, and
21 that we would -- if he was pleading today, I talked to my
22 cocounsel, Mr. Serrano, and we both decided that the third
23 level would be appropriate if the plea was timely and was
24 coming today.

15:21:02 25 Mr. Serrat had advised me he was hoping to

1 talk to him today, and we do have some time if the court
2 wants to grant us a slight recess.

3 Our major problem is, you know, because it's a
4 victim case and there's individuals that will have to be
15:21:16 5 contacted, we would prefer not to have to wait and/or also
6 bring up all the emotions connected with this with the
7 victims. There's some trial prep that if we find out
8 midweek next week, there's no way we can get it ready for
9 the 25th. If the trial date was continued and we changed
15:21:36 10 the 25th --

11 THE COURT: Let me assure you, one thing I'm
12 not going to do is continue the trial.

13 MR. TRIPI: Again, we would rather wait today
14 and give Mr. Serrat an opportunity to talk to him right now,
15:21:51 15 and to see if we can resolve the matter today, than to
16 postpone it to another day.

17 If we can't, though, Your Honor, if the court
18 is of the mind to give him a day or two, I would prefer not
19 to have it -- I would prefer to have it set as an actual
15:22:09 20 date for a potential change of plea, so that it's not a
21 matter of him communicating and us waiting for the 25th,
22 because we have things we would have to do to get ready for
23 the trial.

24 We've already filed jury instructions and voir
15:22:22 25 dire, but the final witness prep would have to take place,

1 and final marking of exhibits.

2 THE COURT: Does the institution come to pick
3 up the defendant?

4 DEPUTY MARSHAL: Yes. They're here. They're
15:22:40 5 standing by. They've been here for the day.

6 THE COURT: They're anxious to get going,
7 obviously?

8 DEPUTY MARSHAL: They are.

9 THE COURT: I can understand that.

15:22:48 10 Let's do this: I will delay it until 4:00.

11 Please take the defendant back to the marshal's office and
12 let Mr. Serrat speak with him.

13 And I want to address the defendant. The
14 question of whether you decide to plead guilty or go to
15:23:11 15 trial is absolutely your choice. And certainly, you can
16 listen to what Mr. Serrat has to say by way of his advice,
17 but in the final analysis, it's your decision, and were I to
18 take your -- if you decide to plead guilty, I'll spend a
19 considerable amount of time in the process taking your
15:23:33 20 guilty plea, explaining your various rights, making certain
21 that there's a factual basis for the plea, explain to you
22 the sentencing consequences if you plead guilty. And that
23 process takes me about half an hour to go through it.

24 So let's do this: You meet with Mr. Serrat,
15:23:51 25 and if I am told at 4:00 that you're not prepared to enter a

1 plea of guilty today, I'm going to schedule the case for
2 trial. I'm not going to schedule another meeting for you to
3 enter a guilty plea. You've got 35 minutes to make up your
4 mind.

15:24:05 5 Court will be in recess until 4:00.

6 (Thereupon, a recess was had.)

7 THE COURT: Let the record show that we are in
8 court in the case of United States versus Matthew Holland,
9 Case Number 1:11cr70.

15:58:37 10 I have been informed that it is the defendant,
11 Matthew Holland's present intention to enter a plea of
12 guilty to the counts charging him with bank robbery in the
13 indictment returned in Case Number 1:11cr70.

14 Mr. Holland, is that correct, that your
15:58:57 15 present intention is to enter a plea of guilty?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, before I can accept your
18 plea, there are a number of matters I need to review with
19 you, and it will take me probably close to half an hour
15:59:09 20 before I am finished. And I want you to understand the fact
21 that you've told me that you now intend to plead guilty does
22 not require you now to plead guilty if you change your mind
23 during our discussion.

24 Do you understand?

15:59:24 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Also, if at any time you have any
2 questions about the instructions I'm giving you,
3 explanations that I'm giving you, I want you to feel free to
4 say to me, "Judge, I don't understand."

15:59:36 5 Will you do that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, I want to examine you under
8 oath with the understanding that if you tell me something
9 under oath that you know is false, you're subject to being
15:59:47 10 prosecuted for perjury or making a false statement.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And I would ask you to please take
14 the oath.

15:59:53 15 CLERK: Please raise your right hand.

16 (Defendant sworn.)

17 THE COURT: Would you please state your full
18 name?

19 THE DEFENDANT: Matthew John Holland.

16:00:05 20 THE COURT: And, Mr. Holland, before you were
21 incarcerated, where did you live?

22 THE DEFENDANT: Cleveland, Ohio.

23 THE COURT: The address?

24 THE DEFENDANT: 2252 West 25th.

16:00:18 25 THE COURT: And how old are you?

1 THE DEFENDANT: Thirty years old.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: College.

4 THE COURT: Do you have some college?

16:00:27 5 THE DEFENDANT: Yes.

6 THE COURT: I assume then that you understand

7 -- I assume English is your native language?

8 THE DEFENDANT: Yes.

9 THE COURT: If at any time I use words today

16:00:40 10 that you don't understand, would you please so indicate to

11 me?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: As you are here today, are you

14 under the influence of any drugs of abuse or intoxicating

16:00:52 15 beverages?

16 THE DEFENDANT: No, sir.

17 THE COURT: In your mind, do you suffer from

18 any mental disabilities of any sort?

19 THE DEFENDANT: No, sir.

16:00:58 20 THE COURT: I want to begin by explaining the

21 constitutional rights to which you are entitled in this

22 case. My guess is you may know some of them, but I'm

23 required to instruct you on those constitutional rights.

24 The first constitutional right to which you

16:01:19 25 are entitled in this case is to be represented by counsel.

1 Now, Mr. Serrat, your counsel, has the
2 obligation to represent you throughout these proceedings.
3 If you plead guilty or are found guilty, he has a continuing
4 obligation to represent you throughout the sentencing
16:01:35 5 proceedings.

6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, the next
9 constitutional right that you in effect give up if you plead
16:01:42 10 guilty is your constitutional right to trial by jury.

11 Do you understand you have such a
12 constitutional right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand were you to
16:01:52 15 stand trial, we will impanel a jury. They would sit over
16 there in the jury box and they would be instructed about the
17 elements of the crime with which you're charged. They would
18 be further instructed that the government had to prove each
19 of the elements of the crime by proof beyond a reasonable
16:02:11 20 doubt, and if they failed to do that, they should find you
21 not guilty.

22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, I would like to take you
16:02:18 25 through the elements of the first count of bank robbery,

1 because I think the elements are similar in all the counts.
2 So do we have a copy of the indictment that we can place in
3 front of Mr. Holland, please?

4 If you don't have a copy, we can get you one.
16:02:50 5 I am sure it's hard to find it.

6 MR. SERRAT: I have one.

7 THE COURT: But I want Mr. Holland to have one
8 in front of him when I review it with him.

9 Phil, do you have a copy?

16:03:14 10 MR. TRIPI: One second, Your Honor.

11 I am sorry, I do not seem to have an extra
12 copy.

13 THE COURT: Can you print one here?

14 CLERK: Yes. I just have to get in the case
16:03:38 15 here.

16 THE COURT: All right, Mr. Holland. I want to
17 review with you the elements of the crime charged in Count
18 1, and I think Count 1, Counts 3, 4 and 5 are similar. The
19 dates changed, but otherwise, I believe the elements are the
16:04:37 20 same.

21 So let's look at Count 1. And the first
22 element of the crime is what I call time and place. You
23 will see it charges that the offense occurred on or about
24 November 13, 2010, in the Northern District of Ohio, Eastern
16:04:51 25 Division. That's the so-called time and place.

1 So the government has to prove that the
2 offense that's further alleged took place on or about that
3 time in that geographical area.

4 Do you understand?

16:05:05 5 THE DEFENDANT: Yes, sir.

6 THE COURT: That's Count -- that's element
7 number 1.

8 The defendants herein, after they've named
9 you, did, by force and violence and by intimidation, take
16:05:15 10 and cause to be taken from the person and presence of
11 tellers and other employees at the U.S. Bank, 2132 Brookpark
12 Road.

13 So the next thing that the government has to
14 prove is that you engaged in some kind of conduct that
16:05:35 15 indicated that you were using force or violence or
16 intimidation to overcome the will of the teller so the
17 teller would deliver to you the money of the bank.

18 Do you understand?

19 THE DEFENDANT: Yes.

16:05:47 20 THE COURT: Any questions about that?

21 THE DEFENDANT: No, sir.

22 THE COURT: Then the government has to prove
23 that the U.S. Bank had its deposits insured by the Federal
24 Deposit Insurance Corporation. The government doesn't have
16:06:07 25 to prove that you knew that, but the government must prove

1 that, or otherwise, the court doesn't have jurisdiction to
2 consider the other elements of the crime.

3 Do you understand?

4 THE DEFENDANT: Yes, Your Honor.

16:06:17 5 THE COURT: And, of course, the government has
6 to prove that the monies that were recovered by the use
7 of violence or intimidation or force were the monies
8 belonging to and in the care, custody and control of the
9 bank.

16:06:35 10 Do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: The reason that's important, let's
13 say you walked into the bank and there's somebody in line at
14 the bank, and you say, "Sir, I am holding you up. Give me
16:06:45 15 your money." That would not be bank robbery. That would be
16 robbery of the person in line, and probably this court would
17 not have jurisdiction over that robbery.

18 So the government has to prove that the monies
19 actually were in the custody of the bank and that those
16:06:59 20 monies were insured by the Federal Deposit Insurance
21 Corporation.

22 Do you see and understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any question about the
16:07:08 25 elements of the crime charged in Count 1?

1 THE DEFENDANT: No, sir.

2 THE COURT: Now, I believe Counts -- you're
3 not named in Count 2, but Counts 3, 4 and 5 are similar,
4 except the dates changed and the banks changed.

16:07:23 5 Mr. Tripi, correct me if I am wrong. I think
6 the elements are the same with those additional counts?

7 MR. TRIPI: The elements are the same. He is
8 charged -- the proof would be more that he's an aider and
9 abettor as to two of the four counts, and that he was the
16:07:34 10 principal robber of two of the counts.

11 THE COURT: All right. Well, from a
12 standpoint of liability for the offense or for his guilt,
13 whether he's a principal or aider and abettor, it doesn't
14 make any difference, as I understand it.

16:07:50 15 MR. TRIPI: Yes, sir. The statute provides
16 that he be treated the same way as the principal if he's an
17 aider and abettor.

18 THE COURT: Now, Mr. Holland, do you feel you
19 understand the nature of the crimes charged in Counts 1, 3,
16:08:02 20 4 and 5?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And do you understand you have a
23 constitutional right to have the question of your guilt or
24 innocence determined by a jury?

16:08:10 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Now, understanding that, in this
2 particular case, do you give up your constitutional right to
3 have this case determined by a jury?

4 THE DEFENDANT: Yes, sir.

16:08:18 5 THE COURT: The next constitutional right we
6 call the constitutional right of confrontation.

7 And what that means is were you to stand trial
8 and were the government to proceed with its testimony, the
9 government would have to call the persons upon whom it
16:08:35 10 depends for its case against you, such as the tellers at the
11 bank, and after the government concludes its examination of
12 that witness or witnesses, Mr. Serrat, as your lawyer, would
13 have the opportunity to cross-examine and challenge the
14 testimony of each witness that the government would present.

16:08:54 15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: That's what we mean by the
18 constitutional right of confrontation.

19 Now, if you plead guilty, you in effect give
16:09:01 20 up your constitutional right to confront the witnesses in
21 this case.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Is that what you wish to do in
16:09:08 25 this case?

1 THE DEFENDANT: Yes.

2 THE COURT: The next constitutional right that
3 is important has to do with the fact that were you to stand
4 trial, the one witness that the government could not call in
16:09:21 5 its case against you is you. They're not allowed to call
6 you as a witness, because you have a constitutional right to
7 remain silent, and that means you cannot be called as a
8 witness by the government.

9 Do you understand?

16:09:33 10 THE DEFENDANT: Yes, sir.

11 THE COURT: And when it came time for you to
12 put your case on, it would be for you to decide whether to
13 testify or not to testify.

14 Do you understand that?

16:09:44 15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, understanding -- now, if you
17 understand that, I want you to also understand, if you plead
18 guilty as you've indicated that you're planning to do, you
19 in effect testify against yourself by your plea of guilty.

16:09:58 20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding that, do you wish to
23 still go forward with your decision to plead guilty?

24 THE DEFENDANT: Yes, Your Honor.

16:10:03 25 THE COURT: Now, another constitutional right

1 that you would have at the time of trial is to have
2 witnesses subpoenaed to come in and testify for you in your
3 defense.

4 Do you understand that?

16:10:15 5 THE DEFENDANT: Yes.

6 THE COURT: Now, I now want to shift gears and
7 talk about the sentencing consequences if you plead guilty.
8 And I believe -- and I would ask the counsel for the
9 government to correct me if I am wrong, but I believe that
16:10:28 10 the statutory penalty for Counts 1, 3, 4 and 5 is the same.

11 MR. TRIPI: That is correct.

12 THE COURT: And what is the maximum sentence
13 that could be imposed upon the defendant?

14 MR. TRIPI: Maximum sentence on the defendant
16:10:38 15 would be up to 20 years on each count of incarceration, up
16 to a \$250,000 fine, or both, up to three years' supervised
17 release to follow any period of incarceration.

18 The defendant is subject to a \$100 special
19 assessment as to each count, and the government would be
16:11:00 20 seeking restitution for the amount taken from each of the
21 four banks.

22 THE COURT: Do you understand what they mean
23 by restitution, Mr. Holland?

24 THE DEFENDANT: Yes, sir.

16:11:06 25 THE COURT: Do you understand this concept of

1 supervised release? Because that's basically new. New in
2 the sense that when I first came on this court back in 1982,
3 if I sentenced somebody to prison, that's the last I saw of
4 them. I didn't have to worry about that person coming back
16:11:29 5 before me if that person violated the conditions of
6 supervised release because it didn't exist at that time.

7 But when the Congress adopted sentencing
8 guidelines, they also decided to do away with the parole
9 board, and they said to us judges, "Guess what, you're now
16:11:45 10 the parole board."

11 So when a person is on supervised release
12 after the person has served the period of incarceration, if
13 that person violates one or more conditions of supervised
14 release, he or she is subject to being sent back to prison,
16:12:01 15 even though they served the original term, if the court
16 finds a violation.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Any questions about that?

16:12:08 20 THE DEFENDANT: No.

21 THE COURT: All right. Now, having said all
22 that, now what becomes important is the application of the
23 sentencing table.

24 Mr. Serrat, do you have a copy?

16:12:21 25 MR. SERRAT: I do, Judge.

1 THE COURT: All right. Now, the sentencing
2 has also changed over the years, Mr. Holland. When the
3 sentencing guidelines first became effective in the late
4 '80s, they were called mandatory, which meant the judge had
16:12:38 5 to decide where the defendant fit on the sentencing table
6 which is in front of you.

7 And then the judge had to sentence within the
8 range that was determined. And in order to determine what
9 the range is, the court has to make two calculations, what
16:12:56 10 is the offense level. You see that phrase up there at the
11 top, "Offense Level"?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: It goes from 1 all the way down to
14 43. And across the top, it says "Criminal History Category
16:13:07 15 (Criminal History Points)."

16 So the court has to decide what the criminal
17 history category is of the defendant. Even if the defendant
18 has no criminal history record, he would still be a Criminal
19 History Category I, which seems kind of stupid, but a person
16:13:20 20 who has no record is still going to be Criminal History
21 Category I.

22 Do you see and understand?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And then based on the number of
16:13:27 25 convictions, why then the criminal history category can go

1 from left to right across the table up to a higher criminal
2 history category.

3 Do you see and understand that?

4 THE DEFENDANT: Yes, Your Honor.

16:13:38 5 THE COURT: Now, after the court has decided
6 what the offense level is, the court has the power to engage
7 in what's called a departure. Departure means the judge
8 says, "Well, I'm going to depart above the range that I've
9 determined and sentence the defendant to more months than
16:13:58 10 that range provides," and that's called an upward departure.

11 Where the judge does that, the defendant may
12 appeal to the Court of Appeals and say, "Well, the judge got
13 it wrong. There wasn't a basis for an upward departure even
14 if he calculated correctly the guidelines.

16:14:16 15 Do you understand?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: By the same token, if the court
18 says, "Well, I think the low number is too high, I'm going
19 to depart downward and give it a lower sentence," now the
16:14:27 20 government can appeal and challenge the downward departure
21 of the trial judge.

22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now it gets even more complicated,
16:14:37 25 because recently the Supreme Court has decided this

1 sentencing table is advisory and not mandatory, but we still
2 have to go through the process and determine where the
3 defendant fits on the table; but now, the court has the
4 discretion to say, "Well, I'm going to vary up above the
16:14:56 5 high number or down below the low number." So it's an
6 upward variance or a downward variance. So a sentencing is
7 more complicated now than it used to be.

8 Now what I would like to do is have you tell
9 me where a person fits on the table if I give you the
16:15:11 10 offense level and the criminal history category. So I want
11 you to look at the table. I want you to assume that I have
12 to sentence somebody today who has an Offense Level 24 and a
13 Criminal History Category Roman numeral III.

14 Where does that person fit on the table?

16:15:25 15 THE DEFENDANT: It's 63 to 78 months.

16 THE COURT: Very well. That's correct. So
17 that's where I would be.

18 Now, I want to digress and ask counsel if you
19 have some view of what the offense level will be if the
16:15:42 20 defendant enters a plea of guilty as he proposes to do, and
21 I want you to understand what I'm told here now is not
22 final. I have to make the final decision as to where you
23 fit on the table.

24 But I would like to know what counsel believes
16:15:55 25 as to where you would fit on the table, so I'm going to ask

1 counsel for the government to proceed first.

2 MR. TRIPI: Your Honor, based on not only this
3 case, but the codefendant, and what was submitted to
4 probation on the other defendant, Mr. Persa, we have a
16:16:10 5 pretty good understanding of where we believe probation will
6 recommend the guidelines to be.

7 As to Count 1, the defendant's base offense
8 level under 2B3.1 of the United States Sentencing Guidelines
9 will be a level 20, and that because the property was taken
16:16:31 10 from a financial institution, you increase the 20 by two
11 levels.

12 As to Count 1, there's an additional two-level
13 increase that's proposed, and I understand that the
14 defendant -- for both defendants that counsel intend to
16:16:47 15 argue about the appropriateness of this one. But that a
16 demand note was used that indicated that he had a gun, and
17 that if a threat of death is made, then the guidelines would
18 be increased by two more additional levels.

19 There are no other adjustments, so for Count
16:17:06 20 1, the final offense level would be 24.

21 So Count 3, the offense level only has the
22 additional two levels for the fact that it was the property
23 of a financial institution, and probation is likely to
24 determine that that is a level 22.

16:17:26 25 For Count 4, again, there's the additional two

1 levels not only for the financial institution, but for the
2 threat of death that was implicitly made by the use of the
3 note that stated, "I have a gun. Stay calm and nobody gets
4 hurt," for a final offense level of 24.

16:17:51 5 In Count 5, again, there's only one
6 adjustment. That's the two levels for financial
7 institution. So Count 4 -- I'm sorry, Count 5 would be an
8 offense level of 22.

9 As the court's aware, pursuant to the
16:18:08 10 multiple-count adjustment guidelines, Section 3D1.4, these
11 four offenses are not grouped, and they're each treated as a
12 separate offense or separate group.

13 Because they're within two levels of each
14 other, each group was graded to have an additional -- count
16:18:32 15 as one unit, and the guidelines tell us that when there are
16 a total of four units, that the offense -- the greatest
17 adjusted offense level, which in this case would be 24,
18 would be increased by four levels, so that the combined
19 adjusted offense level is 28.

16:18:52 20 Your Honor, because of the defendant's plea
21 and provided the defendant continues to express acceptance
22 of responsibility to probation and throughout to the
23 sentencing, the defendant would be entitled to two levels
24 for acceptance of responsibility.

16:19:10 25 Pursuant to our earlier representations to

1 defense counsel, that the United States would consider this
2 to be a timely plea made and that the -- we intend to ask
3 for an additional reduction of one level, which we're
4 allowed to do, for a total of three levels off from 28, that
16:19:33 5 would be an adjusted offense level of 25.

6 Does the court care for me to go into the
7 possibility of criminal history category?

8 THE COURT: Well, I don't know if you have
9 some estimate of what you think the criminal history
16:19:48 10 category might be.

11 MR. TRIPI: Your Honor, this is a difficult
12 case because of the number of convictions, and I believe his
13 previous counsel had asked for a pre-plea/presentence report
14 to have probation give us a better sense.

16:20:02 15 THE COURT: Was that done here?

16 MR. TRIPI: That was not done here. So we --
17 from the government's perspective, it appears that the
18 defendant may be in Criminal History Category IV, which
19 would be a sentencing range of 84 to 105 months at a level
16:20:20 20 25.

21 Your Honor, there was an outside chance that
22 the defendant would be a career offender. Mr. Serrat and
23 Mr. Serrano and I have discussed this issue before, and we
24 believe because of the offenses, priors was a breaking and
16:20:39 25 entering, that it's probably not going to qualify. We would

1 have to have some very unusual facts --

2 THE COURT: To elevate it to a career
3 offender?

4 MR. TRIPI: Excuse me, sir?

16:20:45 5 THE COURT: You would have to have something
6 more to elevate it to career offender?

7 MR. TRIPI: Right. We don't believe that it
8 would be elevated to a career offender. There's an outside
9 possibility that that would happen. If he's not a career
16:21:00 10 offender, these would be the guidelines. These are the
11 guidelines we anticipate would likely be presented in the
12 presentence report.

13 THE COURT: All right. Mr. Serrat, do you
14 have anything you want to add?

16:21:12 15 MR. SERRAT: No, Judge, other than I think
16 it's already -- the court had ruled. We will agree to it as
17 well, the enhancements, it's something that ultimately the
18 court will make a decision at sentencing. Other than that,
19 that is our understanding of the guidelines as well, Your
16:21:23 20 Honor.

21 THE COURT: I want to indicate to Mr. Holland,
22 no matter where the range is finally fixed, I still have an
23 additional duty to decide whether I should vary either
24 upward or downward. It's not very often I do either, but I
16:21:52 25 want you to understand that I have the additional power.

1 Do you understand?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: So the presentence report -- if
4 you plead guilty, the presentence report becomes pretty
16:22:02 5 important, because I want to know as much about every
6 defendant I sentence I can learn, and I get that basically
7 out of the presentence report.

8 So it sounds to me like at least it may well
9 turn out that the sentencing range is 84 to 105 months.

16:22:25 10 Is that your understanding?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand you have the
13 right to argue that it should be modified in some fashion?
14 And I'm the one that makes that decision, but only after I
16:22:35 15 see the presentence report and hear argument of counsel.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions about
19 the sentencing consequences if you do decide to plead
16:22:45 20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: If you do plead guilty, will that
23 plea of guilty be voluntary on your part?

24 THE DEFENDANT: Yes, Your Honor.

16:22:52 25 THE COURT: Will it be an exercise of your own

1 free will?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has anybody forced or threatened
4 you to plead guilty?

16:22:59 5 THE DEFENDANT: No, sir.

6 THE COURT: Now, I also have what's called an
7 addendum to the change of plea that bears your signature,
8 and what it means is that you have reserved to yourself the
9 right to challenge on appeal my earlier rulings on the
16:23:22 10 motion to suppress.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And if -- and so the Court of
14 Appeals, if it's -- if there is a challenge to my earlier
16:23:37 15 ruling, the court is going to make that decision without
16 regard to the fact that you entered a plea of guilty. They
17 have to decide as a matter of law when I'm right or wrong.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

16:23:48 20 THE COURT: So the fact that you're entering
21 into a conditional plea of guilty means that if the Sixth
22 Circuit should decide I was wrong, they send the case back
23 and you're allowed to withdraw your plea.

24 Do you understand that?

16:24:07 25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you have any questions about
2 that?

3 THE DEFENDANT: No, sir.

4 THE COURT: I think you understand that an
16:24:25 5 order of restitution would follow a plea of guilty if I find
6 that the amount that's alleged to have been taken in the
7 robbery is what the proof is, and that would mean that if
8 you're sent to prison, while you're in prison, that I could
9 require you to spend -- use some of the money you get from
16:24:45 10 working in the prison toward restitution, but when you came
11 out and were on supervised release, you would have a
12 continuing duty to make restitution until it was paid.

13 Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

16:24:57 15 THE COURT: Any questions about the
16 restitution?

17 THE DEFENDANT: No, sir.

18 THE COURT: I would ask counsel for the
19 government, is there anything further you think I need to
16:25:09 20 review with the defendant before I ask him for his plea?

21 MR. TRIPI: Your Honor, other than the factual
22 basis.

23 THE COURT: That's right. I completely forgot
24 about the factual basis.

16:25:23 25 Let me explain the factual basis. Before I

1 can accept a plea of guilty, I have to be informed what are
2 the facts that support the plea of guilty.

3 And so I can't find the defendant guilty
4 simply upon his plea, but I have to find separately from the
16:25:42 5 plea that there is a factual basis to support the plea of
6 guilty.

7 So I am going to ask counsel for the
8 government to tell me what the factual basis is for Counts
9 1, 3, 4 and 5. And thank you for correcting me on that.
16:25:56 10 Not correcting me, but reminding me that I missed that very
11 important part.

12 MR. TRIPI: Your Honor, specifically more
13 detailed as to Count 1, as to all of the -- strike that.

14 I have some general comments as to the overall
16:26:11 15 offense conduct, and then as to each specific count, I will
16 provide the court additional factual basis.

17 If this matter were to proceed to trial, we
18 would have witnesses and exhibits which would establish the
19 following beyond a reasonable doubt: That an investigation
16:26:25 20 by the FBI commenced on November --

21 THE COURT: Why don't you indicate which --
22 are you talking about all the counts?

23 MR. TRIPI: All the counts.

24 THE COURT: Because I want the defendant to
16:26:32 25 have the indictment in front of him so he can know which

1 counts you're talking about.

2 MR. SERRAT: We do, Judge. We have one.

3 THE COURT: Okay.

4 MR. TRIPI: That an investigation by the FBI

16:26:41 5 had commenced on November 13, 2010 and revealed that two
6 individuals were responsible for committing several bank
7 robberies. Descriptions by the witnesses established that
8 they were the same individuals, based on the description
9 given by witnesses and video surveillance. Specifically,
16:26:59 10 both wore hat and scarf, but both had prominent noses in the
11 surveillance photographs. However, one was much taller than
12 the other.

13 On January 13, 2011, Matthew Holland and
14 Richard Persa, who we believe to be Holland's cousin and
16:27:17 15 roommate, were arrested by the Cleveland Police Department.
16 On the following day, both Holland and Richard Michael Persa
17 were interviewed by the FBI in separate interviews and -- by
18 the FBI and two deputized federal agents of the Cleveland
19 Cuyahoga County Violent Crimes Task Force.

16:27:40 20 Both admitted to the bank robberies charged in
21 the indictment and gave details on how the robberies were
22 committed. The modus operandi was essentially the same.
23 One individual would walk into the bank while the second
24 stayed outside in the vehicle acting as a lookout and
16:27:57 25 getaway car.

1 The individual going inside the bank would
2 hand the teller a note stating that he had a gun and that it
3 was a robbery, demanding money without a dye pack and listed
4 the denominations that they wanted, that is, 100s, 50s, 20s
16:28:11 5 and 10s. They used the same vehicle, which was a van that
6 had been stolen from the Fleet Avenue/Broadway Avenue area
7 of Cleveland.

8 Specifically as to Count 1, we would be able
9 to demonstrate on November 13, 2010, in the Northern
16:28:29 10 District of Ohio, both individuals took United States
11 currency from the person and presence of tellers and other
12 employees of the U.S. Bank located at 2132 Brookpark Road,
13 Cleveland, Ohio.

14 The investigation revealed that Persa walked
16:28:43 15 into the bank while Matthew Holland waited outside acting as
16 a lookout and a getaway driver. Persa was wearing a hat and
17 scarf covering his face, handed a note to the teller
18 demanding money. Persa was given approximately \$3,703 of
19 monies belonging to the bank, the deposits of which were
16:29:06 20 then insured by the Federal Deposit Insurance Corporation,
21 or the FDIC.

22 And as to -- you know, for purposes of
23 understanding why he's not charged in Count 2, evidence
24 indicated that Richard Michael Persa committed a separate
16:29:23 25 bank robbery which was the subject of Count 2 in which he's

1 pled guilty to.

2 As to Count 3, evidence would show that on
3 December 15, 2010, in the Northern District of Ohio, Matthew
4 J. Holland walked into the Key Bank located at 6300
16:29:41 5 Brookpark Road in Cleveland, Ohio. Persa acted as a lookout
6 man and getaway driver. Approximately \$1,760 was stolen by
7 Holland during the robbery. Key Bank was insured by the
8 FDIC at that time. A note was used in that -- in that
9 robbery.

16:30:02 10 As to Count 4, on December 22, 2010, in the
11 Northern District of Ohio, Eastern Division, Richard Michael
12 Persa walked into the Fifth Third Bank located at 7414
13 Broadway Road, Parma, Ohio, while Matthew J. Holland stayed
14 outside acting as a lookout man and getaway driver. Persa
16:30:23 15 obtained approximately \$5,145 in monies belonging to the
16 bank, the deposits of which were then insured by the FDIC.

17 As to Count 5, on December 30, 2010, in the
18 Northern District of Ohio, Richard Michael Persa and Matthew
19 J. Holland both walked into the Key Bank located at 3370
16:30:46 20 West 117th Street, Cleveland, Ohio. Persa left the bank,
21 but Matthew Holland was successful in taking from a teller
22 approximately \$5,070 in monies that were under the care and
23 possession of said bank, the deposits of which were then
24 insured by the FDIC.

16:31:09 25 Notes were used in both Count 4 and Count 5,

1 as well.

2 Your Honor, the photographic evidence of the
3 surveillance photograph from each of the banks would
4 consistently show the faces of either -- or portions of the
16:31:27 5 faces of either Mr. Persa or Mr. Holland; in other words,
6 the photographic evidence is consistent, although personal
7 identification of each individual was not made by the
8 individual tellers in these cases because they were, again,
9 covering portions of the face with a scarf and with a hat.

16:31:45 10 Your Honor, the evidence would also indicate
11 that obviously we would not go forward with the contention
12 of Mr. Persa as part of our proof, but Mr. Holland gave
13 detailed information to the FBI that included identification
14 of himself and Persa -- excuse me, identification of himself
16:32:07 15 in surveillance photographs and indicating which notes he
16 had personally prepared and which notes were prepared by
17 Persa, or prepared by the other bank robber.

18 THE COURT: Thank you. The court finds there
19 is a factual basis to Counts 1, 3, 4 and 5. Is there
16:32:28 20 anything else I need to review from the government's
21 standpoint?

22 MR. TRIPI: I don't believe there's anything
23 else other than --

24 THE COURT: Mr. Serrat, is there anything?

16:32:40 25 MR. SERRAT: No, Judge, I don't.

1 THE COURT: Now, before I proceed any further,
2 Mr. Holland, do you have any questions that you would like
3 to direct to me before you proceed?

4 THE DEFENDANT: No, Your Honor.

16:32:56 5 THE COURT: Is there anything you would like
6 to discuss in private with your lawyer before we proceed?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Are you ready for me to ask you
9 for your pleas to Counts 1, 3, 4 and 5?

16:33:09 10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you want me to read the text,
12 or do you want to waive the reading of the text of those
13 counts, 1, 3, 4 and 5?

14 THE DEFENDANT: Waive.

16:33:16 15 THE COURT: Very well. Mr. Holland, how do
16 you plead to Count 1 in the indictment in Case Number
17 1:11cr70, which charges you with bank robbery on or about
18 November 13, 2010?

19 THE DEFENDANT: Guilty.

16:33:30 20 THE COURT: Mr. Holland, how do you plead to
21 Count 3, which charges you with bank robbery on or about
22 December 15, 2010?

23 THE DEFENDANT: Guilty.

24 THE COURT: And, Mr. Holland, how do you plead
16:33:42 25 to Count 4, which charges you with bank robbery on or about

1 December 22, 2010?

2 THE DEFENDANT: Guilty.

3 THE COURT: Mr. Holland, how do you plead to
4 Count 5, which charges you with bank robbery on or about
16:33:54 5 December 30, 2010?

6 THE DEFENDANT: Guilty.

7 THE COURT: The court finds that there's a
8 factual basis to support the four pleas of guilty. The
9 court finds the defendant understands the constitutional
16:34:07 10 rights to which he's entitled and which are relevant in this
11 matter. The court finds that the defendant understands the
12 sentencing consequences, and the court finds there's a
13 factual basis to support the pleas of guilty to each of the
14 four counts. So, therefore, the court finds the defendant
16:34:21 15 guilty as charged in Counts 1, 3, 4 and 5.

16 I would like to confer with counsel now for a
17 date for sentencing.

18 (Thereupon, a sidebar discussion was had.)

19 THE COURT: Mr. Holland, I'm going to schedule
16:35:58 20 your sentencing for the noon hour on October 6, 2011.

21 The next step will be for me to order a
22 presentence report. The probation department will prepare
23 that report. It's very important. That report accompanies
24 you to prison. You want to make sure it's accurate.

16:36:24 25 The first thing that will happen is you will

1 be interviewed and your lawyer will make sure he's available
2 for the interview by probation. Then they will prepare the
3 report. And in advance of October 6, the proposed report
4 will come out to counsel. They will have an opportunity to
16:36:42 5 review it, and if they think there's something missing or
6 wrong, they can bring that to the attention of the probation
7 department.

8 I am asking you to look at it very carefully,
9 because if you think there's something missing or wrong,
16:36:55 10 make sure that Mr. Serrat knows about that, because the
11 report is not only going to consider the offense conduct,
12 they're also going to ask you if you have anything to say
13 that constitutes an acceptance of responsibility. And I am
14 sure Mr. Serrat will counsel you on that.

16:37:13 15 But one thing I want to caution you against,
16 if you -- and this happens from time to time. Defendants
17 will plead guilty and they will go to the probation
18 department and say, "Well, I pled guilty but I wasn't really
19 guilty," and et cetera, et cetera. Well, you just forfeited
16:37:29 20 acceptance of responsibility. So you want to be sure you
21 don't do that, because it harms the eventual sentence,
22 because you need that acceptance of responsibility to adjust
23 the guidelines downward, and I believe you understand that.

24 THE DEFENDANT: Yes, Your Honor.

16:37:45 25 THE COURT: And then it's going to -- the

1 presentence report is going to consider your criminal
2 history, and if you think that's wrong, make sure Mr. Serrat
3 knows about it.

4 They're also going to consider your education,
16:37:59 5 and you told me you went to college, so they will want to
6 know about that. They will consider -- and they'll want to
7 know about your employment history, your health. If there
8 had been problems with your health, they're going to want to
9 know about that. They're going to ask questions about your
16:38:12 10 family.

11 So it's a rather complete document, and that
12 will go with you to the Bureau of Prisons, so you want to be
13 sure it's a very accurate document.

14 Any questions about that?

16:38:21 15 THE DEFENDANT: No, sir.

16 THE COURT: Is there anything further to come
17 before the court today?

18 MR. TRIPI: No, Your Honor.

19 MR. SERRAT: No, Judge.

16:38:27 20 THE COURT: Thank you. Court will be in
21 recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Lori A. Callahan
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